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BEFORE ARIZONA CORPORATION COMMISSION

DOCKETED

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CHAIRMANJIM IRVIN  
COMMISSIONERMARC SPITZER  
COMMISSIONER

JUL 10 2002

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IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
APPROVAL OF NEW PARTIAL  
REQUIREMENTS SERVICE TARIFFS,  
MODIFICATION OF EXISTING PARTIAL  
REQUIREMENTS SERVICE TARIFF 101, AND  
ELIMINATION OF QUALIFYING FACILITY  
TARIFFS.

DOCKET NO. E-01933A-02-0345

IN THE MATTER OF THE COMPLAINT BY APS  
ENERGY SERVICES COMPANY, INC. AGAINST  
TUCSON ELECTRIC POWER COMPANY.

DOCKET NO. E-01933A-02-0375

IN THE MATTER OF THE UNIVERSITY OF  
ARIZONA'S PETITION FOR DECLARATORY  
ORDER DIRECTING TUCSON ELECTRIC  
POWER COMPANY TO MAKE AVAILABLE  
ALL ELECTRIC RATES FOR WHICH THE  
UNIVERSITY QUALIFIES.

DOCKET NO. E-01933A-02-0388

IN THE MATTER OF THE APPLICATION OF  
TUCSON ELECTRIC POWER COMPANY FOR  
APPROVAL OF ITS STRANDED COST  
RECOVERY.

DOCKET NO. E-01933A-98-0471

**PROCEDURAL ORDER****BY THE COMMISSION:**

On May 10, 2002, Tucson Electric Power Company ("TEP") filed with the Arizona Corporation Commission ("Commission") an application for approval of new partial requirements service tariffs, modification of existing partial requirements service tariff 101, and elimination of Qualifying Facility ("QF") tariffs ("TEP Tariff Application").

On May 22, 2002, APS Energy Services Company, Inc. ("APSES") filed a Petition to Intervene and Protest of the TEP Tariff Application. In its Petition to Intervene, APSES requested that the Commission summarily reject that portion of the TEP Tariff Application seeking to modify Rate 101 and eliminate the QF tariffs, or alternatively, that the Commission suspend the TEP Tariff Application and set it for hearing. APSES also requested that the TEP Tariff Application be

1 consolidated with Docket No. E-01933A-98-0471 et al., which is the current proceeding reviewing  
2 TEP's Motion for Clarification of Settlement Agreement regarding its market generation credit  
3 calculation ("TEP MGC"). TEP's Motion for Clarification has heretofore been included in "Track B"  
4 of the Commission's consideration of Competitive Solicitation issues.

5 On May 22, 2002, APSES also filed a complaint against TEP alleging that TEP has refused to  
6 provide service under certain of its QF tariffs to the City of Tucson ("City") for a cogeneration  
7 facility that the City has contracted with Tucson District Energy, LC ("TDE") to construct  
8 ("APSES/City Complaint"). TDE is a wholly-owned subsidiary of APSES.

9 On May 31, 2002, the Arizona Cogeneration Association ("ACA") filed an Application for  
10 Leave to Intervene in the TEP Tariff Application.

11 Also on May 31, 2002, TEP filed a Response to APSES' Petition to Intervene. In its  
12 Response, TEP states that it does not object to APSES' intervention, but that it does object to the TEP  
13 Tariff Application being consolidated with the TEP MGC proceeding.

14 On June 5, 2002, the Commission issued Decision No. 64868, which suspended the TEP  
15 Tariff Application for 120 days and ordered TEP to provide all of its customers with notice of that  
16 Application.

17 On June 10, 2002, APSES filed a Response to TEP's Response to APSES' Petition to  
18 Intervene ("Reply"). In its Reply, APSES requests that a hearing be held to review the new partial  
19 requirements tariffs. APSES also asserts that the TEP MGC proceeding deals with the same issues  
20 APSES contests in the TEP Tariff Application proceeding. APSES is concerned that if TEP's  
21 proposed market generation credit calculation is approved in a separate proceeding, that the parties to  
22 the TEP Tariff Application may be prejudiced by being prevented from objecting to the use of the  
23 same calculation being used in TEP's tariffs.

24 On May 23, 2002, the University of Arizona ("U of A") filed with the Commission the above-  
25 captioned Petition for Declaratory Order, in which the U of A requests that the Commission enter an  
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1 order directing TEP to permit the U of A to purchase power pursuant to TEP Pricing Plans PRS-104,  
2 PRS-105 and PRE-106 ("U of A Petition").

3 On June 13, 2002, TEP filed an Answer to the U of A Petition.

4 By Procedural Order dated June 19, 2002, the Commission granted intervention to APSES  
5 and the ACA in the TEP Tariff Application.

6 Also pursuant to the June 19, 2002 Procedural Order, the Commission convened a Procedural  
7 Conference on June 25, 2002, for the purpose of addressing whether any of the aforementioned  
8 matters should be consolidated and to address the procedural schedule. At the June 25, 2002  
9 Procedural Conference, TEP, APSES, the U of A, the ACA and Commission Staff appeared through  
10 counsel.  
11

12 TEP stated a belief that the TEP MGC issue could be considered alone and did not have to be  
13 consolidated with either the APSES Complaint or the U of A Petition. TEP believes that the TEP  
14 MGC matter, is a discrete issue and could be considered outside the Track B proceeding, or if it  
15 remains part of Track B, can be handled relatively summarily. TEP further noted that the TEP Tariff  
16 had been suspended for 120 days and did not see a benefit of consolidating the tariff with either the  
17 APSES Complaint or U of A Petition proceeding because TEP believed that the complaints may be  
18 able to be resolved quicker than the 120 days. TEP stated it was currently in negotiations with  
19 APSES and the U of A and may be able to resolve one or both matters shortly. TEP did not advocate  
20 consolidating the two complaint proceedings as TEP believed that resolution may be easier if the  
21 individual issues are kept separate.  
22

23 APSES has recommended that the TEP Tariff Application be consolidated with the TEP  
24 MGC matter because the same formula for determining the price in the TEP MGC matter will affect  
25 the QF tariff. Although all the parties to the TEP (Stranded Costs) Settlement Agreement have  
26 agreed to a new formula for calculating the market generation credit, APSES has some issues with  
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1 the proposed language. Because the TEP MGC issue has been consolidated with the Track B  
2 investigation, APSES has not yet had a procedural forum to present its problems with the MGC  
3 formula. Ultimately, APSES is in favor of a process that leads to a quick resolution and is concerned  
4 that if its complaint is consolidated with the TEP Tariff Application, the complaint will not be  
5 resolved expeditiously.

6 The U of A, also, did not believe that the U of A Petition should be consolidated with any  
7 other matter. The U of A wants a quick resolution of the issues raised in its petition and believes that  
8 consolidation will not assist that goal. The first issue that must be resolved, in the U of A's opinion,  
9 is what the contractual arrangements between the parties and TEP require, and the U of A believes  
10 that answer can be resolved separately from the issue of what tariff is available.

12 Staff stated that it makes sense to consolidate the TEP MGC proceeding and the TEP Tariff  
13 Application because the tariff application refers to the MGC. If the matters are not consolidated, a  
14 party wanting to participate in the tariff proceeding could not assess whether they support the tariff or  
15 not. Staff did not take a position on whether the complaints should be consolidated. Staff stated that  
16 the TEP Tariff application could be addressed in a hearing or Staff could handle it as they do most  
17 tariff filings and take its recommendation to the Commissioners at Open Meeting without a hearing.

19 With respect to the U of A Petition, TEP and the U of A have agreed on a recommended  
20 procedural schedule. They propose that the parties file a status report with the Commission by July  
21 17, 2002, which report would indicate if the matter has been settled, or is close to being settled, or  
22 alternatively, will give the date by which the U of A would file an amended petition. TEP would file  
23 an answer, counterclaim or cross claim by August 5, 2002. The parties anticipate engaging in  
24 discovery and propose a hearing in September or early October.

26 APSES agreed that it was likely the parties would know by July 17, 2002, whether they are  
27 able to resolve the APSES/City Complaint. TEP suggested that status conference on or around July  
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1 17, 2002, would be beneficial.

2 No party advocated consolidating the complaints with each other or with the TEP Tariff  
3 Application. The main concern of the parties is that consolidation may prevent a quick resolution of  
4 the complaints. The parties do not deny that the complaints and Tariff Application are related. If  
5 APSES or the U of A were to prevail in their proceedings the Commission may determine that they  
6 are entitled to participate under the QF Tariff, but if the QF Tariff is withdrawn as a result of a  
7 separate TEP Tariff Application proceeding, the parties may find themselves in the same position as  
8 before bringing their complaints.  
9

10 Consolidating the TEP MGC issue and the Tariff Application appears to have support and  
11 make sense. The TEP MGC issue is not intricately related to, and does not have to be considered as  
12 part of the Track B proceedings concerning Competitive Solicitation. The TEP MGC is more closely  
13 related to the TEP Tariff Application.  
14

15 Based on the comments of the parties and to promote efficiency, the TEP MGC issues should  
16 be consolidated with the TEP Tariff Application. Removing the TEP MGC issues from Track B will  
17 enable this discrete issue to be resolved more quickly. At least one party, APSES, has requested a  
18 hearing on the Tariff Application. Although Staff did not believe a hearing is required, it did not  
19 oppose a hearing. Accordingly, a hearing on the consolidated matter is appropriate.

20 The complaint proceedings involve similar, but distinct issues. Consolidating them may  
21 complicate the individual proceedings unnecessarily. Thus, we will not consolidate the complaints  
22 with any other proceeding at this time. A Procedural Conference should be held for the purpose of  
23 determining the status of the complaints and to set a hearing and pre-hearing schedule if needed.  
24

25 IT IS THEREFORE ORDERED that the issues raised in TEP's Motion for Clarification of  
26 Settlement Agreement regarding the calculation of its MGC (Docket No. E-01933A-98-0471) shall  
27 be removed from the Track B proceeding and consolidated with the TEP Tariff Application (Docket  
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No. E-01933A-02-0345) and set for hearing.

IT IS FURTHER ORDERED that a Procedural Conference shall commence on **July 19, 2002** at **10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices at 1200 West Washington, Phoenix, Arizona. The parties shall be prepared to discuss the status of the APSES Complaint, the U of A Petition, and recommend hearing guidelines if necessary. The Procedural Conference shall also address scheduling issues related to the consolidated MGC/Tariff Application proceeding.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 10<sup>th</sup> day of July, 2002.

  
JANE RODDA  
ADMINISTRATIVE LAW JUDGE

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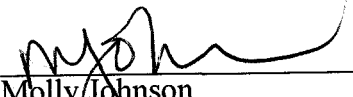
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